

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

MARY ANN MULLINS,

Plaintiff,

No. _____

vs.

METROPOLITAN LIFE INSURANCE
COMPANY,

Defendant.

NOTICE OF REMOVAL

Defendant Metropolitan Life Insurance Company (“MetLife”) submits this Notice of Removal for the purpose of removing the above-entitled action from the Fifth Judicial District Court, Eddy County, New Mexico to the United States District Court for the District of New Mexico, and states as follows in support of this removal:

1. Plaintiff Mary Ann Mullins (“Mullins”) is an individual and a resident of Eddy County, New Mexico. *See* complaint at ¶ 1, a copy of which MetLife has attached as Exhibit A to this notice of removal.

2. Royce Allen (“Decedent”) is a former employee of Nuclear Waste Partnership, LLC and a participant in the group employee benefits plan of Nuclear Waste Partnership, LLC (“Plan”). Exhibit A, ¶¶ 3-6.

3. The Decedent had life coverage under the Plan, and designated Mullins as his life benefits beneficiary. Exhibit A, ¶ 3.

4. MetLife is the claim administrator responsible for determining claims for life benefits under the Plan, and issued a group life insurance policy to Nuclear Waste Partnership,

LLC in order to fund the Plan's life benefits. Exhibit A, ¶¶ 3, 5; *see also* affidavit of Pati Casey at ¶¶ 4-5, which MetLife has attached as Exhibit B to this notice of removal.

5. MetLife is a New York corporation with its principal place of business in New York. Exhibit B, ¶ 7.

6. Nuclear Waste Partnership, LLC established the Plan for the benefit of its employees, and, therefore, the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1001, *et seq.*, governs the Plan and Mullins' claim for life benefits under the Plan. Exhibit B, ¶¶ 3, 6; *see also* 29 U.S.C. § 1002(1)(A).

7. Mullins has named MetLife as the defendant in a civil action commenced in the Fifth Judicial District Court, Eddy County, New Mexico, entitled *Mullins v. Metropolitan Life Ins. Co.*, No. D-503-CV-2017-00428. Exhibit A.

8. MetLife first received notice of this action when it was served with the summons and complaint on April 17, 2017 by service on CT Corporation System. *See* copies of the proof of service and summons, which MetLife has attached as Exhibit C to this notice of removal.

9. Upon inquiry by counsel for MetLife, no further state court proceedings have occurred or are scheduled in the state court action.

10. Federal question jurisdiction arises, because Mullins's claims against MetLife relate to life benefits under an ERISA-governed employee welfare benefit plan.

11. Therefore, this Court has original "federal question" jurisdiction over this action pursuant to 28 U.S.C. § 1331(general federal question jurisdiction provision) and 29 U.S.C. § 1132(e)(ERISA jurisdiction provision).

12. ERISA preempts all of the state law claims alleged in the complaint, and provides the exclusive remedy for resolution of benefit claims by employee benefit plan participants and

beneficiaries. 29 U.S.C. § 1144(a); 29 U.S.C. § 1132(a)(1)(B); *Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58 (1987); *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41 (1987).

13. As a civil action founded on a claim or right arising under the laws of the United States, this action is properly removable to this Court pursuant to 28 U.S.C. § 1441(a) and (b).

14. Alternatively, the District of New Mexico also has diversity jurisdiction over this case.

15. MetLife is a “foreign corporation” in New Mexico. Exhibit B, ¶ 7.

16. Mullins has asserted claims to recover “life insurance benefits” that MetLife allegedly refused to pay. Exhibit A, ¶¶ 9, 11-14, and 16-17.

17. The amount of life benefits at issue is \$125,000. Exhibit B, ¶ 8.

18. Mullins also is seeking the award of reasonable attorneys’ fees as an element of her damages. Exhibit A, ¶ 17; *see also* Exhibit A at 4 (Prayer for Relief paragraphs of Counts 1 and 2).

19. The Court will consider the maximum limit of the insurer’s liability under the Plan at issue in assessing the amount in controversy for jurisdictional purposes. *State Farm Mut. Auto. Ins. v. Narvaez*, 149 F.3d 1269, 1271 (10th Cir. 1998); *see also Terra Nova Ins., Ltd. v. Fort Bridger Historical Rendezvous Site, Corp.*, 151 F. App’x 678, 680 (10th Cir. 2005)(unpublished).

20. The amount of the life benefits at issue, \$125,000, standing alone is significantly greater than the diversity jurisdictional amount of \$75,000.

21. Based on the foregoing, this action is properly removable, because it is a suit over which the United States District Court for the District of New Mexico would have original

“diversity” jurisdiction pursuant to 28 U.S.C. § 1332 and, therefore, is removable to this Court pursuant to 28 U.S.C. § 1441(a).

22. MetLife will serve and certify service of copies of this Notice of Removal to Mullins as required by 28 U.S.C. § 1446(d).

23. In compliance with D.N.M.LR-Civ. 81.1(a), MetLife will file with the Clerk legible copies of other records and proceedings from the state court action within 28 days after filing this notice of removal.

24. MetLife will file a copy of this notice of removal with the Clerk of the Fifth Judicial District Court, Eddy County, pursuant to 28 U.S.C. § 1446(d). *See* copy of state court notice of removal that MetLife has attached as Exhibit D to this notice of removal.

THEREFORE, defendant Metropolitan Life Insurance Company gives notice pursuant to 28 U.S.C. § 1446 of the removal of this action from the Fifth Judicial District Court, Eddy County, New Mexico, and requests that this Court enter such further orders as may be necessary and proper.

DATED this 17th day of May, 2017.

Respectfully submitted,

HOLLAND & HART LLP

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**ATTORNEYS FOR DEFENDANT
METROPOLITAN LIFE INSURANCE COMPANY**

CERTIFICATE OF SERVICE

I hereby certify that on May 17, 2017 I electronically filed the foregoing with the Clerk of the Court using CM/ECF system, which will send notification of such filing to the following e-mail addresses:

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